

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

PERFECT FIT MCDONALD, Inc.<sup>1</sup>

Employer

and

Case 19-RC-14341

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS LOCAL 763, AFL-CIO

Petitioner

**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>2</sup> in this proceeding, the undersigned makes the following findings and conclusions.<sup>3</sup>

**SUMMARY**

The Petitioner is the incumbent representative of all but one of the employees working at the Employer's Seattle Facility. On January 2, 2003, the Petitioner filed the instant petition<sup>4</sup> seeking to add the sole, unrepresented employee -- an account receivable desk position -- working at the Facility, to the existing unit of warehouse, driver and counter employees.<sup>5</sup> Essentially, the Employer opposes the petition because the account receivable desk job (ARD) is an office clerical position, which

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<sup>1</sup> The name of the Employer appears as amended in the hearing.

<sup>2</sup> Both parties filed timely briefs, which were duly considered.

<sup>3</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>4</sup> The petition was amended at the hearing.

<sup>5</sup> The current collective-bargaining agreement between the Employer and the Union defines the existing unit as a unit of pickup and delivery drivers and of all inside employees whose duties shall pertain to the handling of parts, equipment or supplies common to the upholstery and canvas/products industry in the employ of the Employer located in King County, Washington (hereinafter referred to as "Unit employees").

does not share a sufficient community of interest with Unit employees and because inclusion runs counter to a long collective-bargaining history.

Contrary to the Employer, I find that the ARD position, as the sole and remaining unrepresented position working at the Facility, does share a sufficient community of interest with existing Unit employees to warrant inclusion in the Unit and, thus, the ARD employee should be permitted to vote whether she wishes to be represented by the Petitioner.

## **FACTS**

### **1.) Background**

The Employer is a State of Washington corporation engaged in the wholesale supply of upholstery and in the wholesale and retail supply of canvas-type fabrics and supplies for customers located throughout the United States, but concentrated mostly in the Northwest. The Employer has offices and warehouses located in Seattle, Washington and Portland, Oregon. Only the Seattle Facility is at issue here.

The Employer's Seattle Facility supplies upholstery for domestic and commercial furniture and for marine interiors, primarily pleasure boats. It also supplies trim for automotive interiors, including upholstery, carpeting, headlining material, convertible tops and trunk lining. In addition, the Employer sells canvas grade products from horse blankets to tents.

The president, James Roddy, oversees the operations of the Seattle Facility, with the assistance of his two sons, Mark Roddy, a manager, Paul Roddy, a purchasing manager, and with the assistance of a daughter, Catherine Williamson, an office manager.<sup>6</sup> The Seattle facility is divided into an office area and two departments. The president, managers and disputed ARD position are located in the office area of the first floor of the Facility. One department is also located on the first floor and in relatively close proximity to the office area. The second department is located on the second floor of the Facility.

The Petitioner currently represents three counterpersons, five warehouse employees and one truck driver, in the existing and historical Unit, working at the Seattle Facility.<sup>7</sup> Unit employees work in one of two departments at the Facility. One department (fabric and supplies), with six Unit employees, is located on the first floor while the other department (foam), with three unit employees, is located on the second floor.

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<sup>6</sup> The statutory supervisory authority of these individuals was not addressed at the hearing. However, there is no contention that any of these individuals should be included in the existing unit. Furthermore, the managers are sons and a daughter of the president. As such, these individuals would, in any event, be excluded from the unit as relatives of the president. See, e.g., *Luce & Son, Inc.*, 313 NLRB 1355 (1994).

<sup>7</sup> Although the record does not reflect the representational history of the existing unit, the Employer, in its brief, states that the Union's representation dates back to the 1930s. There is no dispute that the Employer and the Union have enjoyed a long history of collective bargaining.

These two departments share a shipping subdepartment with a shipping & receiving clerk, also a Unit employee, who packages orders, does the shipping paperwork, uses a computer to enter what shipments were sent and to whom. The shipping & receiving clerk also fills orders if he is not busy. He uses a forklift, pallet jacks and hand trucks to move product around as well as cutting tools, marking pens and the UPS data entry machine in conjunction with his shipping & receiving function.

Shipping also employs a driver (a Unit employee) who, in addition to his driving duties, works at one of the counters as a counter person. The percentage of work he does in these two positions is not detailed in the record.

Both departments have counters from which counter (Unit) employees service customers coming into the facility. The foam department also includes a Unit employee, in a warehouseman position, who uses saws to cut foam to customer specifications. The other warehouse (Unit) people receive and stack goods coming into the facility and fill orders using the forklifts, pallet jacks and hand trucks.

The Employer also employs three outside salespersons, who work on commission rather than on an hourly rate. They have no set working hours, and are generally on the road servicing regions from Seattle to Idaho and Oregon when they are not filling their vehicles with product. Warehouse people will assist the outside sales people in loading the vehicles. Outside sales people own their vans or trucks, which they utilize in their work, and are reimbursed for travel expenses in connection with their sales function. Outside sales people are not included in the existing Unit and are apparently unrepresented.

The Employer employs no other employee classifications or positions at or out of the Seattle Facility other than those generally described above.

## **2.) Flow of Work and Duties and Working Conditions of the ARD Position**

Kathleen Wilson, who currently is employed in the ARD position, was hired by the Employer in 2000 to fill that job. With respect to Wilson's duties and responsibilities, the record reveals that when a customer calls to place an order, Wilson will forward the call to a counter employee in the appropriate department. In turn, that counter employee will enter the order into the computer and print out a sales order. For orders directed to the fabric and supplies department, a tag will also be printed from a separate printer describing the fabric and how many yards are ordered. The sales orders and any tags are then placed in the sales order holder where warehouse employees pick up the orders, fill them, enter the quantity filled, and initial the sales order. Another Unit employee will check the work and also initial the sales orders.

The order then proceeds to the shipping subdepartment where the product is packaged with a copy of the sales order or with an enclosed packing slip. The shipping & receiving clerk fills out the shipping forms (e.g., UPS forms), including the charge to the customer, and places the completed sales orders in a holder for pick-

up the next day. The sales orders are then reviewed the next day for accuracy by the president who also separates the orders into routine, credit card and outside salesperson delivery orders, and gives the orders to the ARD employee Wilson. Wilson, then, organizes the regular sales orders by account number and enters them into the computer invoice program. Wilson also converts the orders into invoices, adding any freight charges and she changes quantities if numbers do not match the order. Wilson is also responsible for printing out a daily sales report, posting payments into accounts receivable, and processing payments that she receives from the outside salespersons.

Wilson testified that 20 percent of her work-time is dedicated to interaction with warehouse and counter employees. In that regard, she, in addition to the shipping & receiving clerk, initiates UPS traces on shipped product when necessary. She will process charge card sales at the counter desks and receive cash payments from customers to be credited to their accounts. The counter employees also process sales and process credit cards on Fridays and when Wilson is sick.<sup>8</sup> Like counter employees, Wilson will also tell customers if product has shipped. In response to customer inquiries regarding the amount of a shipping cost, Wilson will contact Unit employees as to the weight and size of a shipped box to determine this cost and/or to respond to the inquiring customer.

The record reveals that Wilson enters the warehouse about 12 times a day to question other employees about orders, invoices, problems or change of addresses called in by customers. Wilson also goes to the foam department about twice a week to resolve customer problems related to this aspect of the Employer's operations. The actual amount of time she spends with warehouse and counter employees, on an individual basis, is not generally specified, only that, collectively, this contact or interaction constitutes 20 percent of her work-time.

With respect to supervision, the president and office manager supervise the ARD employee. The president and manager supervise Unit employees and outside salespersons. It is unclear whether the purchasing manager supervises any employee.

Regarding wages, Wilson earns \$13.39 an hour. Unit employees are also paid hourly wage rates, which break down as follows: counterpersons earn between \$15.89 and \$17.44 an hour; the head shipping and receiving clerk earns \$15.07 an hour; automotive warehousepeople (including pickup and delivery driving, order picking, helping in shipping and receiving room, inventory work and packing) earn \$14.79 an hour; foam fabricator earns \$14.19 an hour; and new hire trainees earn from \$9.94 to \$13.48 an hour. Regarding the unrepresented outside salespersons, they are paid on a commission basis.

Except for outside salespersons, all employees, including the petitioned-for ARD employee, work 8:00 a.m. to 4:30 p.m. Monday through Friday with one half hour for lunch and punch in on the same time clock. There is one lunchroom or all employees.

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<sup>8</sup> The record does not elaborate on the reason(s) why Fridays involve an interchange of work.

Outside salespeople and the ARD employee are the only employees offered the opportunity to participate in the profit sharing and 401(k) plan(s), although, the ARD employee has just recently been offered the plan.<sup>9</sup> There was no further description of the profit-sharing program, including what remunerations the ARD employee received in accordance with the plan.

Except for the ARD employee, all Unit employees and outside salespersons perform inventory on December 31 of each year.

### **POSITION OF THE PARTIES**

Petitioner seeks to include the ARD position in the existing Unit of employees. The Petitioner, in its brief, also characterizes the inclusion of the ARD position as an accretion.

The Employer contends that the ARD employee shares an insufficient community of interest with Unit employees to warrant her inclusion. Further, it argues that the ARD employee is an office clerical and that office clericals are traditionally excluded from units such as that represented by the Petitioner at the Seattle Facility. The Employer also appears to contend that to include the ARD position in the Unit would unduly disrupt a long collective-bargaining history underlying the existing Unit of employees.

I also note that no other labor organization seeks to represent the ARD employee, the outside salespersons and/or any other alternative unit of employees.

### **ANALYSIS**

As noted above, I find that the ARD position should be permitted to vote regarding representation. In particular, I find that including the ARD position in the existing Unit of employees does not constitute an inappropriate unit. Contrary to the Employer's position, the record reveals that the ARD position shares a sufficient community of interest with the existing Unit of employees to warrant inclusion. To find otherwise would have the unfair impact of prohibiting the ARD position, as the sole and remaining unrepresented classification working at the Seattle Facility, from exercising the Section 7 right to choose whether to be represented by a labor organization.<sup>10</sup>

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<sup>9</sup> The Employer offered Wilson the 401(k) plan shortly before the commencement of the hearing in this matter. At this point, Wilson, apparently, has neither accepted nor rejected that offer. The Employer's witness testified that the ARD employee also participates in a profit-sharing plan; however, Wilson did not address profit-sharing in her testimony.

<sup>10</sup> Petitioner seeks to "accrete" the clerical position into the existing unit. However, I reject the Petitioner's contention that an accretion of the ARD position to the existing Unit of employees is applicable to the circumstances of this case. Rather, an "accretion" argument is reserved for unit clarification (UC) proceedings involving disputes over newly created positions or positions that have undergone recent and substantial changes. *Robert Wood Johnson University Hospital*, 328 NLRB 912 (1999). Neither of these circumstances is present here. The ARD position has been in existence since at least 2000 and has been, since at least that time, historically excluded from the existing Unit of employees. Because the instant case involves neither a newly created position nor a recent and

Many considerations enter into a finding of an appropriate unit. One, of several considerations in determining the appropriateness of a bargaining unit, is prior bargaining history, which is given substantial weight. The reason it is given substantial weight is because the Board is reluctant to disturb a unit established by collective bargaining, which is not repugnant to Board Policy or so constituted as to hamper employees in fully exercising rights guaranteed by the Act. **Red Coats Inc.**, 328 NLRB 205 (1999); **Washington Post Co.**, 254 NLRB 168 (1981); **Fraser & Johnson Co.**, 189 NLRB 142, 151 fn. 50 (1971); **Lone Star Gas Co.**, 194 NLRB 761 (1972); **West Virginia Pulp and Paper Co.**, 120 NLRB 1281, 1284 (1958); **Great Atlantic & Pacific Tea Co.**, 153 NLRB 1549 (1965). The rationale for this policy is based on the statutory objective of stability in industrial relations. See also **Hi-Way Billboards**, 191 NLRB 244 (1971).

As in many areas of substantive law, exceptions are made to the general rule. For instance, the bargaining history of a group of employees in a plant does not control the unit determination for every other group of unorganized employees in the plant. **North American Rockwell Corp.**, 193 NLRB 985 (1971); **Piggly Wiggly California Co.**, 144 NLRB 708 (1963); **Arcata Plywood Corp.**, 120 NLRB 1648, 1651 (1958); **Joseph E. Seagram & Sons, Inc.**, 101 NLRB 101 (1953). Here, any argument by the Employer in favor of keeping intact the historical nature of the existing Unit of employees is certainly outweighed by the countervailing policy of affording the sole and remaining ARD position working at the Seattle Facility an opportunity to determine whether to be represented by Petitioner. For to deny the ARD position an opportunity, in these circumstances, would effectively foreclose Wilson's opportunity for representation because the community of interests of the ARD position simply do not lie with outside salespersons. See, e.g., *NLRB v. Paper Mfrs. Co.*, 786 F.2d 163 (3d Cir. 1986).<sup>11</sup>

The community of interests of the employees is also a major consideration in a finding that a position's inclusion in an existing unit is appropriate. When the interests of one group of employees are dissimilar from those of another group, a combined unit is appropriate. *Swift & Co.* 129 NLRB 1391 (1961). However, the fact that two or more groups of employees engage in different processes by itself does not render a combined unit inappropriate if there is a sufficient community of among all these employees. *Berea Publishing Co.*, 140 NLRB 516, 518 (1963).

The factors affecting community of interests' determinations may be found in the following sampling: degree of functional integration; common supervision; the nature of the employee skills and functions; interchangeability and contact among

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substantial change, neither a unit clarification proceeding nor an accretion argument is available to the Petitioner. See, *Id.*; *Union Electric Co.*, 217 NLRB 666 (1975). Further, I note that the Petitioner amended its petition at hearing to alternatively contend that clericals should be permitted to vote for representation by the Petitioner in a self-determination election.

<sup>11</sup> See also *Montgomery Ward Co., Inc.* 259 NLRB 280 (1981), wherein the Board expanded a represented unit of warehouse employees and/or plant clericals to a wall-to-wall unit by including unrepresented office clerical employees and "inside" -- as opposed to "outside" -- "salespersons." In this proceeding, the Board highlighted the significance of "inside" as opposed to "outside" salespersons and the impact of such a finding on its ultimate determination on the appropriate unit.

employees; general working conditions; and fringe benefits. However, the important consideration remains the overall community of interest among the several employees. See *United States Steel Corp.*, 187 NLRB 522 (1971); *Brand Precision Services*, 313 NLRB 657 (1994) and *Aerospace Corp.*, 331 NLRB No. 74 (2001).

Here, it is undisputed that the ARD position is functionally integrated into the sales, billing, customer service and shipping function of the facility and in the performance of these and other duties the ARD position has contact and/or interchange with unit employees that constitute 20 percent of her work time; a strong, albeit not conclusive, indicator of her community of interest with unit employees. In that regard, counter persons operate some of the same computer programs and share the same credit card machines with the ARD employee. Both ARD and counter employees receive payments from customers, and counter persons will assist the ARD employee with converting sales orders into invoices. Both will answer customer questions. The ARD position has contact with counter and shipping & receiving employees in regards to the status and costs of shipping and also has contact with the foam department regarding customer service.

In terms of general working conditions, Unit employees and the ARD share the same lunchroom, use the same time clock to punch in on, and work the same hours. Unlike outside salespersons, whom the Employer pays a commission, unit employees and the ARD employee are paid hourly.

The Employer argues that the ARD employee's contact and/or interchange with Unit employees is mostly voluntary, social and/or personal in nature. I disagree. As I have found, the ARD's contact and/or interchange with Unit employees is in the performance of her duties and represents a significant aspect of her work.

The Employer also characterizes the petition as seeking *all* office clerical employees to be included in the existing unit. The Employer contends that should the Employer, at a future but unspecified date, employ additional office clerical employees, such employees should not be included in the existing unit. The Petitioner amended its petition at hearing to include "clerical employees" into the existing unit; however, there is only one clerical position at the facility. Although, the record indicates that there was a second clerical employee working at the facility in the past, that position was eliminated a year ago and there are no apparent plans to hire other clericals. Hence, any future expansion in the Employer's clerical work force is simply pure speculation, at this point, and, thus, not a sufficient reason to impact my decision. See, e.g., *Evans Products Co.*, 221 NLRB 1080 (1975).

If the Employer's objection to the petition seeking to include *all* clerical positions concerns inclusion of *office* as opposed to *plant* clericals into the Unit, I find I need not reach the issue of whether the ARD position is an office or plant clerical position. First, as I have found, dismissing the petition, in this matter, would effectively leave the ARD employee without an opportunity to express a desire concerning representation. *Vecellio & Grogan*, 231 NLRB 136 (1977). Secondly, the Petitioner is petitioning for what in essence is a wall-to-wall unit of all employees located at the Employer's Seattle facility. Although the Board generally will exclude office clericals from a less than plant-wide unit, it will not do so when they are part of

a petitioned-for overall unit. *Livingstone College*, 290 NLRB 304, 305 (1988); *Montgomery Ward Co., Inc.*, supra.

The Employer further contends that the clerical position should not be included in the existing unit because she has separate supervision from unit employees. Although she does not share immediate supervision with unit employees, she does share supervision by the president with unit employees. In any event, a difference in supervision is not a per se basis for excluding employees from inclusion in an appropriate unit. See *Texas Empire Pipe Line Co.*, 88 NLRB 631 (1950).

Finally, the Employer asserts that the ARD employee, unlike unit employees, is offered a 401(k) and profit sharing program that is not available to Unit employees but is available to outside salespersons. However, it appears that the offer of a 401(k) plan is the result of Unit employees' participation in the Teamster's pension plan. Little information is proffered concerning the profit sharing program and the ARD employee's part in it. As far as other fringe benefits, such as vacation, health and holidays, the record is silent.

Contrary to the Employer's contentions, I find that the ARD employee, in the performance of her work, has significant contact with Unit employees and, like Unit employees, is paid hourly, shares the same time-clock and lunchroom and works the same hours. These common interests between Unit employees and the ARD position pale in comparison to any actual or perceived lack of common interests surrounding separate immediate supervision and the 401K/profit sharing plan(s).

Accordingly, I shall direct a self-determination election to be held to determine whether the ARD employee wishes to be included in the existing Unit of employees.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible



shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Teamsters Local 763, AFL-CIO, Petitioner. A vote in favor of such representation shall be taken as a vote in favor of representation by the Petitioner of the voting group as part of the existing Unit of employees.

If a majority, of those voting, vote for such representation, the ARD position shall become part of the existing Unit of employees represented by Petitioner. In such event, the following bargaining unit shall become appropriate for purposes of collective bargaining:

All regular full-time and part-time employees employed by the Employer in King County, Washington; excluding all outside salespersons, guards, watchmen, managers and supervisors as defined in the Act.

If a majority of those voting do not vote for such representation, the voting group (ARD position) shall remain unrepresented.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Acting Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29<sup>th</sup> Floor, Seattle, Washington 98174, on or before February 20, 2003. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

### **NOTICE POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an

employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by February 27, 2003.

**DATED** in Seattle, Washington, this 13<sup>th</sup> day of February 2003.

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